

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)
Plaintiff,) 8:05CR106
vs.) ORDER
MARIANO CORDERO-JUAREZ,)
Defendant.)

This matter is before the court on the motion of defendant Mariano Cordero-Juarez (Cordero-Juarez) to dismiss the Indictment (Filing No. 49 - Sealed). A hearing before the undersigned magistrate judge on the motion to determine the defendant's age will commence at 2:00 p.m. on May 23, 2005, in Courtroom No. 7, Second Floor, Roman L. Hruska U.S. Courthouse, 111 South 18th Plaza, Omaha, Nebraska. The defendant must be present for the hearing.

At the hearing the initial burden of proving the defendant's age will fall on the government which must offer *prima facie* evidence of defendant's adult status. If the government satisfies this burden, defendant must then come forward with evidence of his juvenile status. If the defendant comes forward with such evidence, the government will have an opportunity to rebut with additional information. After receiving such evidence, the court will determine from the preponderance of the evidence the date on which the defendant was born. Thereafter, the undersigned magistrate judge will provide a report and recommendation to Chief Judge Bataillon. **See *United States v. Salgado-Ocampo*, 50 F.Supp 2d 908 (D. Minn. 1999).** **See also:** ***United States v. Ceja-Prado*, 333 F.3d 1046 (9th Cir. 2003); *United States v. Garcia Flores*, 925 F.2d 1471 (9th Cir. 1991); *United States v. Alvarez-Porras*, 643 F.2d 54, 66-67 (2nd Cir.), cert. denied, 454 U.S. 839 (1981).**

IT IS SO ORDERED.

DATED this 4th day of May, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge